Supreme Court, U.S.
FILED

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No.

In the
Supreme Court of the United States
October Term, 1998

In re Miss Lynn Johnston, Petitioner
v.

The Hon. David F. Hamilton US Dist. Court Judge, Bureau of Motor Vehicles Comm., Gary Gibson Commr. of the BMV Comm., Jeff Byrd Dir. of Titles, Dave Martin Br. Mgr., Nancy Carlstedt Pres. of Bloomington Hosp., Trustees of Ind. Univ., Paul Norris, Jr., Ex. Chief Officer Ind. Univ. Dept. of Police, "Alan Doe/male back-up" & Andy Stephenson & "1st name unknown" Jacobs Officers of Ind. Univ. Dept. of Police, Mike Patton Tow-Truck Driver, Clerk Pat Haley & Judge Douglas R. Bridges & Dep. Prosecutors Jim Trulock & Jeff Kehr of Monroe County, & Unknown Bonding Agents & Insurers,

Respondents.

On Petition For Writ of Mandamus to the Seventh Circuit Court of Appeals

PETITION FOR A WRIT OF MANDAMUS

Miss Lynn Johnston, 816 Auto Mall Rd.,
Suite No.243, Bloomington, IN 47401 (812-335-2070)

6 pp

QUESTIONS PRESENTED

Entry of judgment (max. $500. fine & loss of drivers license) after prosecutor's obstruction of access to an arraignment judge, led to removal for constitutional violations and remand for state court appeal which was blocked upon notice of appeal by evidence tampering and trial in absentia leading to the 2nd criminal judgment. Within 48 hours of refusing to re-draft the ensuing federal civil rights complaint leaving out certain defendants, arrest and 40 days of solitary confinement followed during which the suit was dismissed, and the habeas corpus petition with a remand-contempt motion fell on deaf ears. All 5 attempts to pay the underlying car plate tax were unlawfully refused, thus questions flow from denial of meaningful court access to enforce rights and compel performance of duties owed to Petitioner.

The BMV Question: Whether, absent federal law compelling membership in the Social Security System with respect to people NOT seeking benefits or otherwise participating or formally withdrawn and barred from its benefits, and in light of the US Const. Art. IV, sec. 2, cl. 1 and 1st, 9th, 10th & 14th Amendments, 42 USC 405 (C)(1)(vi)(v)(ii)&(E) and 5 USC 552(a)(Note), and Ind. Code 4-1-8-2 & 4-1-8-5, the Bureau of Motor Vehicles Commission has a duty to provide car registration and license plate services to applicants NOT part of such benefits scheme and without membership numbers?

Prosecutorial Deferral & Arraignment Question: Whether, in light of the US Constitution's separation of powers, Art. IV, sec. 2, cl. 1, and the 5th and 14th Amendments and pervasive county prosecutors' schemes for diverting minor criminal cases into

"prosecution deferral programs" in which they solicit money concurrent with the undertaking of arraignments of defendants, they have a duty to disclose their identity and allow defendants access to judicial branch officials for arraignments?

Higher Pro Se Complaint Standards Question: Whether, in light of the 1st Amendment right to petition for redress of grievances, equality before the law, Bennett v. Schmidt, et al., 153 F3d 516 (7th. Cir. 1998) and imposition of local federal rules and "pro se forms" in essence requiring pre-1939 "fact" and "code" complaints prior to discovery under a perjury standard with a $1000. penalty, judges have a duty to tolerate the longer, more detailed character of the complaint instead of, sua sponte, using it to strike?

The Striking & Disappearances Question: Whether, in light of the US Constitution's separation of powers and the 1st Amendment right to petition for redress of grievances by 7th Amendment jury adjudicatory process, government employees with executive branch allegiance and agendas have a duty to refrain from covert interventions or other executive functioning in the judicial branch for causing an answerable complaint to be stricken, documents and pleadings to be "disappeared," and a deaf ear turned to matters properly lodged for judicial branch resolution?

Judicial Branch Access Fees! Question: Whether, in light of the 1st Amendment right to petition for redress of grievances in the judicial branch and equality before the law, judicial branch personnel have a duty to welcome use of such peaceful dispute settlement processes without conditioning usage upon payment of access fees or other discouragements?

Habeas Corpus-Blocked State Rights Question: In light of (1) entry of criminal judgment for violation of Ind. Code 9-18-2-29 absent judicial arraignment, etc., (2) federal remand for state appeal, (3) county blockage of appeal by evidence tampering and entry of a 2nd criminal judgment upon trial in absentia still absent arraignment, advisement of rights and compulsory legal process, whether a federal judicial duty exists pursuant to 28 USC 2241(a)(c)(3), 28 USC 2242, 28 USC 2243, 28 USC 2244(d)(1)(B), 28 USC 2251, 28 USC 2252 and Argersinger v. Hamlin, 407 US 25 (1972) and Petitioner's (A) presentment of entitlement to relief, (B) loss of drivers license, (C) related financial and criminal record consequences, and (D) absent a signed contempt order for 15 days imposition of 40 days incarceration, to provide habeas corpus relief and issuance of the show cause order sought as to why the trial judge shouldn't be held in contempt of said remand order?

The 7th Duck & Switch Question: Whether, in light of the 1st Amendment right to petition for redress of grievances, 28 USC 46(a)(c) and the due process clauses of the 5th and 14th Amendments, a US court of appeals can "duck" the necessity of making a decision on a mandamus petition by "switching" and ordering it to be construed as an appeal (under Petitioner's protest and as a separate case number) to then "find" [by selectively constru- ing and ignoring dates and entries and FRAP Rule 25(a)(1)(2)(A)(B)(i), Rule 26(a)(c), and Rule 31(a)], that it has no "appeal" jurisdiction necessary for meaningful relief, or whether it has a duty to hear and determine the matter put before it?

LIST OF PARTIES

Relative to Petitioner's May 7, 1998 federal civil rights complaint, all parties in interest do NOT appear in the caption here of the case directly coming from the Seventh Circuit Court of Appeals as they have not yet been properly identified nor served copies of the Complaint and Summons. Such omitted parties are "Ann Doe," "Barbara Doe," Michelle "Doe," and "Unknown Bonding Agents and Insurers," "Mike Patton" in the caption having been identified as "Bob or Carol Doe" Tow-truck Driver of Ken's Westside Shell, has been substituted therefor.

Relative to Petitioner's Jan. 2, 1998 federal removal and remand of Monroe County criminal case No. 53 C 05 9711 IF 07836 filed by the university corporate cop Stephenson, he and the county clerk, prosecutors and judge are listed in the caption.

Relative to Petitioner's July 23, 1998 Habeas Corpus Petition with show cause Motion as to why the "trial in absentia" judge should not be held in contempt of US District Court Judge McKinney's remand Order, said judge is listed in the caption. Although neither name appears in the caption, Sheriff Sharp has been substituted in for service of copies of the instant mandamus petition due to his replacement of indicted respondent Monroe County Sheriff Williamson.

RULE 29.6 CORPORATE DISCLOSURE

Petitioner is a private citizen and thus there is no parent company nor non-wholly owned subsidiary company to be disclosed.

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Petitioner respectfully prays that a Writ of Mandamus issue to review the matters below.

OPINIONS BELOW

No opinion is reported relative to **Seventh Circuit case no. 98-3519** (Petition for a Writ of Mandamus to Hon. David F. Hamilton, US Dist. Court Judge, Southern Dist. of Ind., Indianapolis Div. in Lynn Johnston (Plaintiff) v. The Bureau of Motor Vehicles Commission, et al. No. I P 98-0621 C-B/S. Seventh Circuit Court of Appeals law librarian John Klaus represents that "**no mandamus decision exists for case 98-3519.**"

No opinion is reported relative to **Seventh Circuit case no. 98-3682** (Johnston, Lynn v. Bureau Motor Vehicle, et al "Appeal form United States District Court case no. 98 C 621"), **a case which came into existence when the Seventh Circuit Panel ordered** its clerk to send the above mandamus petition "supporting complaints, and exhibits" to the US District Court Clerk of the Southern District of Indiana for **"construing as a notice of appeal" according to a date chosen by the Panel. The Seventh Circuit Decision of Nov. 9, 1998 on such appeal case no. 98-3682**, speaking to the Panel's lack of "appeal" jurisdiction (not the merits), is found at **Appendix A.** It bears no court seal, no signatures nor stamps, and no certified copy *as the mandate* has been provided, but www public docket indicates the mandate issued on Dec. 1, 1998. Seventh Circuit Librarian Klaus represented that "no decision or judgment has yet issued on case no. 98-3682."

No opinion is reported relative to United States District Court civil rights case **No. I P 98-0621 C-B/S**

(a/k/a IP 98 0621 C-H/G), Lynn Johnston (Plaintiff) v. The Bureau of Motor Vehicles Commission, et al. **The Aug. 4, 1998 entry and order are found at Appendix B** with the related or referenced prior entries/orders of June 16, and May 12, 1998. **The Sept. 11, 1998 entry/order** which was **"construed"***upon unknown and undisclosed factual and legal bases* by the Seventh Circuit Panel ***as a Rule 60(b) motion for rehearing,*** is found at **Appendix C.**

No opinion is reported relative to the **Sept. 11, 1998 habeas corpus petition and contempt show cause motion (No. IP 98-1012 C-T/G,** US District Court). **The motion** for a show cause order why the county court judge should not be held in contempt of the Jan. 6, 1998 federal remand order, **has not been ruled on** to date. The **petition dismissal** entry/order is found at **Appendix D.** Petitioner copy is *postmarked Nov. 3, 1998 fifty-five days subsequent to issuance,* and the **Nov. 18, 1998 motion for findings of facts and conclusion of law and "re-opening of the case"** was denied on Nov. 30, 1998 by reference to the Sept. 11, 1998 document.

JURISDICTION

The date on which Petitioner first raised federal issues in the Monroe County Court was Dec. 4, 1997 (case no. 53 C 05 99711 IF 07836) by attempting (unsuccessfully) to gain access to, and be arraigned by, a judicial branch magistrate or judge.

The date on which Petitioner first raised federal issues in the US District Court was Jan. 2, 1998 by filing a verified "Notice of Removal" with supporting exhibits including the Dec. 18, 1997 criminal conviction entry

of the Monroe County Court (for alleged failure to appear Dec. 4, 1997) and defendant's file-stamped Dec. 4, 1997 "Appearance Form Criminal."

According to the correspondence between them (see Complaint Exhibit 8, p.4 of civil right case IP 98-0621-C-B/S), **January 7, 1998 is date on which Ind. Att. Gen. Jeffrey Modisett became involve** with the Monroe County judge who would, after the Dec. 18, 1997 criminal conviction records were disappeared, conduct a "trial in absentia" (on Mar. 26, 1998) absent arraignment and compulsory process. **28 USC 2403(b) may apply** due to certain widespread prosecutorial "practices" and "programs" affecting the public interest and involving constitutional issues for which Petitioner has NOT found state statutory authority. He is served, and the civil rights and mandamus records below evidence consistent service upon him as though he were a co-defendant.

The date on which Petitioner filed the state court "Claim of Appeal" against the Dec. 18, 1997 criminal conviction suggested by the Jan. 6, 1998 remand (no. IP 98-0004-C-m/s), **was Jan. 9, 1998.**

The date on which state court appeal blocking (by records/evidence tampering) **occurred was between Jan. 9 and 22, 1998** when Monroe County court records and docket-printouts were made unavailable to Petitioner for inspection or copy procurement. **Federal issues were attempted to be raised during such time frame** (by Petitioner asserting, without success, the right to see and purchase copies required for the appeal at the county clerk's counter). Subsequent to Jan. 22, 1998, County court records became accessible but were altered by subtractions and additions prevent-

ing the appeal of the Dec. 18, 1998 conviction. **The state court *appeal blocking*,** to the extent that Monroe County "programs" and "practices" have taken root over the past decade and are now effectively institutionalized in the absence of statutory authority, **has the equivalent effect of an essential state/county expression or ordinance that vindication of federal constitutional and statutory rights through state appeal process will NOT be permitted** and stand in contempt and against the intent of the Jan. 6, 1998 remand and Petitioner's federally-protected equal right to meaningful state court process, **constituting a county/state-manufactured basis for federal jurisdiction from Jan. 9, 1998 forward upon** the state's effective repudiation of the basic republican form of government and organic rights framing its authority to be a government in the first place under the jurisdiction of **1 Stat. 50 (Aug. 7, 1789), 2 Stat. 58 (May 7, 1800), and US Const. Art. III. sec, 1 & 2.**

July 21, 1998 is the date on which Petitioner first raised the federal habeas corpus cause of action (no. IP 98-C-1012-T/G) **and contempt "show cause" motion** against the "trial in absentia" judge. **Federal jurisdiction was** obligatory under the provisions of **28 USC 2242, 28 USC 2243, 28 USC 2245, 28 USC 2251, 28 USC 2252** and as a result of the record of petition facts **under 28 USC 2254(a)** stating grounds in violation of the US Constitution and pursuant law, citing **Argersinger v. Hamlin, 407 US 25 (1972),** the lack of probable cause for holding in jail a non-arraigned person NOT summoned for a "trial" already finished more than 3 months prior, life and health threatening 8th Amendment violations, and lack of paper needed to communicate to the court; under **part (b)(1)(A)(B)(i)(ii)** showing exhaustion due to county blockage of avail-

able state court appeal corrective process of such a character and circumstance that otherwise existing state court process was ineffective to protect her rights; under **part (d) showing the criminal case was not adjudicated on the merits** given the absence of the defendant, counsel and compulsory process contrary to reasonable application of clearly established federal law determined by the Supreme Court; under **part (e)(1)(2) showing she couldn't be in custody pursuant to a state court judgment absent an imprisonment penalty for the alleged crime [Ind. Code 9-18-2-29** with an underlying "bad stop" from the statutorily inadequate and criminally unlawful status of complainant university corporate cops for undertaking traffic stops solely for ticketing or seizing improperly registered cars under Ind. Code 9-13-2-1, 9-1-2-43, 9-22-1-2, 9-22-1-1, 35-50-3-2, and Fields v. State, App. 1978, 382 N.E.2d 972], leaving a reasonable fact finder without basis to have found her guilty of the underlying offense. **The Sept. 11, 1998 habeas petition dismissal decision was not mailed to Petitioner until Nov. 3, 1998.** In light of the 55 days delay, the necessity of an early Oct. 1998 filing of the mandamus petition (7th Cir. no. 98-3519 upon Dist. Court no. IP 98-0621-C-B/S [later "-H/G"]), the habeas corpus companion status, and the district court failures to act, the habeas issues could not be fully developed within case no. 98-3519 but were sufficiently disclosed to have allowed the Panel to deal with them, **and in that measure, the Seventh Circuit Nov. 9, 1998 Decision** (no. 98-3682 and subject to the "SWITCH AND DUCK QUESTION") **provides a basis for jurisdiction. Petitioner's July 21, 1998 "show cause/contempt" motion was never ruled on.** Ongoing habeas interests include loss of drivers license, criminal record, etc. **On Nov. 30, 1998,** by reference to the Sept. 11, 1998 habeas decision, the

Nov. 18, 1998 "Motion for Findings of Facts and Conclusions of Law..." and for **re-opening the case, was denied** (thus no motion for a certificate of appealability, required for standard appeal under 28 USC 2253(a)(c)(1)(A)(2)(3), would be considered).

The date on which the federal civil rights cause of action was filed is May 7, 1998. Irregularities quickly began. It was struck on May 12, 1998 within hours of service all the major defendants (including Ind. Att. Gen. Modisett). No record exists showing the court's striking order served beyond Petitioner, nor quashing summonses. Defendants county clerk, and hospital president filed timely appearances, but defendant university entities did not until mid-June, 3 days after the former law partner of their counselor was substituted in as district court judge. No one has yet filed an appearance for any BMV commission defendant. Petitioner's thirteen, June 4, 1998 motions for default judgments were all denied within 1 day of the assignment of the substituted judge. A time allowance was set through July 15, 1998 during which Petitioner was advised that the court would entertain her motion for its pre-filing approval of a substitute complaint. On July 14, 1998 Petitioner refused the request made on behalf of several of the university defendants to re-write the complaint leaving them out. On July 15, 1998 Petitioner filed and served 3 documents, most significantly in mitigation of the striking orders. US Dist. Court Clerk time-stamped copies of them (from Petitioner's file and inadvertently and significantly held as her property in jail 40 days concurrent with the break-ins of her residence and locked mail box) HAVE BEEN "DISAPPEARED" from the district court record and EXIST ONLY in the documentary/exhibits Appendix

to the Seventh Circuit Petition for a Writ of Mandamus (which the Panel sent back in total for district court for filing as "a notice of appeal" and which by subsequent Dec. 1, 1998 "Notice of Issuance of Mandate" from the court of appeal clerk [peculiarly containing no mandate], untimely informed Petitioner of the disposal of the documentary exhibits), **thus constituting (among others) a US Supreme Court supervisory jurisdiction cause relative to "duck and switch," and destroy issue of the 7th REVIEW QUESTION.** On July 16, 1998 three university police squad cars containing civil rights defendants undertook the arrest and indeterminate incarceration of Petitioner during which time her civil rights case was dismissed (without prejudice) for abandonment on Aug. 4, 1998, Petitioner remaining in solitary confinement 20 day thereafter. **There being no appeal jurisdiction on such a dismissal, AND PETITIONER HAVING NO OTHER COMPLAINT THAN THE ONE FILED MAY 7, 1998, and due to official acts and omissions, a timely district court "Notice of Forthcoming Mandamus Petition to the 7th Circuit Court of Appeals" was filed and served on Sept. 3, 1998.** There being no fixed timing rules for mandamus petitions, Petitioner proceeded under the guidance and time calculations of Fed.R.App.P. 25(a)(1)(2)(A)(B)(i), Fed.R. App.P 26(a)(c), Fed.R.App.P 31(a), sending the **Petition for a Writ of Mandamus to the court of appeals by Express® Mail on Sunday, October 4, 1998** (10 days within the 40 day appeal briefing rule). **The court of appeals recorded with a filing date of Oct. 6. 1998, ordering its clerk to return such filing to the district court for filing and designation there as "a notice of appeal" upon the date of "Oct. 6, 1998."** *Thereafter* the Seventh Circuit Panel **assigned such "appeal" a different number (98-3682)** and with no district court

record transmitted to the court of appeals, **issued its Nov. 9, 1998 Decision, *not on the merits, but rather on a lack of timely appeal jurisdiction.*** The records below show Petitioner filed notices of protest and motions relative to these developments, with the last motion being filed, unfiled and returned, and re-sent by Express® Mail and still NOT recorded on the circuit court docket and thus remaining undecided, contrary to the provisions of FRAP R45(b)(d), 28 USC 46(c).

28 USC 2403(a) may apply, thus Solicitor General has been served. The only federal employee who is a named respondent in the Seventh Circuit Mandamus Petition (no. 98-3519) or any of the companion causes, is US Dist. Court Judge David F. Hamilton. With the exception of the JUDICIAL BRANCH ACCESS FEE QUESTION which was totally ignored in the courts below and may have been certifiable, Petitioner has NOT directly drawn into question the constitutionality of any Act of Congress. The litigation is for enforcement of provisions of law in existence and meaningful performance of duties, and compensations owed Petitioner by and from persons operating under color of law.

No rehearing petition to the Court of Appeals Nov. 9, 1998 Decision on appeal no. "98-3682" was filed. No decision addressing the merits *of anything* (except the companion removal/ remand case) exists. **In light of the foregoing manufactured procedural and jurisdictional problems, there is no standard certiorari jurisdiction embracing what Petitioner brings forward. The causes of action brought forth here, are properly addressed with the aid of the ALL WRITS ACT and are characterized as corrective supervisory, or enforcement of statute matters. The jurisdiction of this Court is invoked under 28 USC 1651(a).**

Constitutional & Statutory Provisions Involved
(in relevant parts)

US Constitution

Art. IV, sec. 2, cl. 1: The Citizens of each State shall be entitled to all Privileges and Immunities of Citizens in the several States.

1st Amendment: Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceable to assemble and to petition the Government for a redress of grievances.

5th Amendment: ...nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of like, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

9th Amendment: The enumeration of the Constitution, of certain rights, shall not be construed to deny or disparage others retained by the people.

10th Amendment: The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people.

14th Amendment: ....No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State Deprive any person of life, liberty, or

property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Separation of powers: Art. 2, Sec. 1, Cl. 1: The executive Power shall be vested in a President of the United States of America. Art. 3, Sec. 1: The Judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.... Art. 1, Sec. 1: All legislative Powers herein granted shall be vested in a Congress of the United States, which shall consist of a Senate and House of Representatives. Art/ 4. Sec/ 4 : The United States shall guarantee to every State in this Union a Republican Form of Government....

Equality before the law: 14th Am. Sec. 1 : ...nor shall any State...deny to any person within its jurisdiction the equal protection of the laws. Art. 1, Sec. 9, Cl. 8 : No title of Nobility shall be granted....

1 Stat. 50 [Incorporation of the Northwest Ordinance into the statues at large....ARTICLE II. The inhabitants of the said territory shall always be entitled to the benefits of the writ of habeas corpus, and trial by jury; ...and of judicial proceedings according to the course of the common law. All persons shall be bailable, unless for capital offences, where the proof shall be evident, or the presumption of great. All fines shall be moderate; and no cruel and unusual punishments shall be inflicted. No man shall be deprived of his liberty or property, but by the judgment of his peers, or the law of the lad; and should the public exigencies make it necessary, for the common preservation, to take any person's property, or to demand his particular

services, full compensation shall be made for the same. And in the just preservation of rights and property, it is understood and declared, that no law ought ever to be made, or have force in the territory, that shall in any manner whatever interfere with or affect private contracts or engagement, bona fide, and without fraud previously formed.

2 Stat. 58 An ACT to divide the territory of the United States northwest of the Ohio, into two separate governments," approved by the president on May 7, 1800, established the Indiana Territory as a separate governmental unit. The act also provided for a territorial government similar to that of the Northwest Territory...

28 USC 2243 A court, justice or judge entertaining an application for a writ of habeas corpus shall **forthwith** award the writ or issue an order directing the respondent to show cause why the writ should not be granted, unless it appears form the application that the applicant or person detained in not entitled thereto.
The writ, or order to show cause shall be directed to the person having custody of the person detained. It shall be returned within **three days** unless for good cause additional time, not exceeding **twenty** days, is allowed.
The person to whom the writ or order is directed shall make a return certifying the true cause of the When the writ or order is returned a day shall be set for hearing, not more than five days after the return unless for good cause additional time is allowed.
Unless the application for the writ and the return present only issues of law the person to whom the writ is directed shall be required to produce at the

hearing the body of the person detained.
The applicant or the person detained may, under oath, deny any of the facts set forth in the return or allege any other material facts.
The return and all suggestions made against it may be amended, by leave of court, before or after being filed.
The court shall summarily hear and determine the facts, and dispose of the matter as law and justice require.

28 USC 2245 On the hearing of an application for a writ of habeas corpus to inquire into the legality of the detention of a person pursuant to a judgment, the certificate of the judge who presided at the trial resulting in the judgment setting forth the facts occurring at the trial, shall be admissible in evidence. Copies of the certificate shall be filed with the court in which the application is pending and in the court in which the trial took place.

28 USC 2251 A justice or judge of the United States before whom a habeas corpus proceeding is pending, may, before final judgment or after final judgment or discharge, or pending appeal, stay any proceeding against the person detained in any State court or by or under the authority of any State for any matter involved in the habeas corpus proceeding.

After the granting of such a stay, any such proceeding in any State court or by or under the authority of any State shall be void. If no stay is granted, any such proceeding shall be as valid as if no habeas corpus proceedings or appeal were pending.

28 USC 2252 Prior to the hearing of a habeas corpus proceeding in behalf of a person in custody of State officers or by virtue of State laws notice shall be served

on the attorney general or other appropriate officer of such State as the justice or judge at the time of issuing the writ shall direct.

28 USC 2254(a) The Supreme Court,...or a district court <u>shall</u> entertain an application for a writ of habeas corpus in behalf of a person in custody **pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution** or laws or treaties of the United States.

STATEMENT OF THE CASE

Facts Relied on for the BMV Question: Petitioner, not a member of the Social Security benefits system, made 5 attempts to secure the BMV's acceptance of her car tax/registration assessment, acceptance of which conditions its performance of standard services to which she is legally entitled, and without which she is put in jeopardy of penalties under law.

Petitioner relied on the absence of federal legislation compelling membership in the Social Security System with respect to people NOT seeking benefits or otherwise participating or formally withdrawn and barred from its benefits, and on application of the **US Const. Art. IV, sec. 2, cl. 1 and 1st, 9th, 10th & 14th Amendments, 42 USC 405 (C)(1)(vi)(v)(ii)&(E)** and **5 USC 552(a)(Note), and Ind. Code 4-1-8-2 & 4-1-8-5** to cause the BMV to meet its duty to provide car registration and license plate services to applicants (Amish or otherwise) such as Petitioner without causing usage of cooperating third parties permitting (essentially fictitious and potentially financially liabilous) car registrations under their Social Security Numbers. Two ministers and 1 car salesman offered Petitioner use of their Social Security Numbers, which was declined on fraud grounds.

Petitioner still has no license plate on her car, nor has her title registration been processed, and thus can neither lawfully use, nor dispose of her car. Tax receipt and license plate/registration duties are owed to Petitioner by the BMV. Petitioner has no other option than to rely on, *to date unavailable* legal process for resolution of this failure to perform.

Facts Relied on for the Prosecutorial Deferral and Arraignment Question: Petitioner was targeted for participation in the county prosecution diversion "program" by defendant university corporate cops who arrested her contrary to:

> **Ind. Code 9-18-2-29** (circumscribing an underlying "bad stop" from the statutorily inadequate and criminally unlawful status of complainant corporate cops for undertaking traffic stops solely for ticketing or seizing improperly registered cars under) **Ind. Code 9-13-2-1, 9-1-2-43, 9-22-1-2, 9-22-1-1, 35-50-3-2,** and **Fields v. State, (App. 1978), 382 N.E.2d 972.**

The result was car seizure, transport in the back of a marked squad car, and her presentation with a signed and sealed criminal complaint and summons requiring appearance in the county courthouse. Upon her timely appearance (Dec. 4, 1997) she caused the clerk to file and provide her with a clerk-date-stamped copy of her "Appearance Form Criminal" (**Appendix G**) and when her case number was called, she presented herself as many other defendants gathered there before her had done. She suffered money solicitation and an attempted arraignment by an unidentified man in an obvious position of authority over all the other personnel in the area, later identified as deputy prosecutor Trulock. After identifying herself, Petitioner stood mute and was treated in an intimidating and abusive manner, and directed to leave by said deputy prosecutor, and she did so, discharging all obligation imposed under the summons received Nov. 24, 1997.

Prosecutorial diversion "programs" have been operating in Monroe county for about a decade. On

Dec. 18, 1997 county court notice was sent of entry of criminal conviction with assessment of a fine (and pending loss of drivers license if not paid) **(Appendix F)**. Petitioner promptly removed the conviction to federal court, and on Jan. 6, 1998, a remand issued **(Appendix G)** suggesting she take a state court appeal, which was filed in Monroe county court on Jan. 9, 1998. The appeal was blocked as specified herein elsewhere. Petitioner has not since been summoned to appear for anything, and has still not been arraigned or advised and cautioned about her legal rights and privileges.

Defendant university corporate cops have informed Petitioner that she will again be stopped and her car seized and "ticketed" back into the same prosecution diversion "program" if they catch her driving again, and given the fact said corporate cop joint county government "policing enterprise," "collection methods" and the second entry of criminal conviction from a jury "trial" in absentia, resulted in the loss of her drivers license on July 2, 1998 according to notice sent by defendant BMV, exercising her right to travel in her own private car, has the local revenue-generating racket's guarantee of being very costly and inconvenient, and without effective recourse.

Petitioner relied on the US Constitution's republican form of government and separation of powers, due process, and the deterrent of financial liability for conduct undertaken absent all jurisdiction or lawful authority. Petitioner' liberty is thus restrained and she remains under threat of university corporate cop/county prosecutors' infliction of further losses. In these circumstances, Petitioner has no other option than to rely on, *to date unavailable* legal

process for resolution of her civil rights cause of action, and termination of all such prosecutorial diversion "programs," such that, if she is again summoned to court, she will not be diverted and obstructed from access to a readily identified judicial branch judge or magistrate for genuine arraignment.

Facts Relied on for the Higher Pro Se Complaint Standards Question: Petitioner is a pro se litigant. The Indianapolis US district court imposes a higher complaint drafting standards upon pro se litigants with a penalty of up to $1,000.00 for noncompliance under local rules (**Appendix H**, p.24-25). Litigants are purportedly confined to usage of the court's "pro se" 1983 complaint Forms. There is no "JS," "AO," or OMB" authorization number on the forms.

Such Forms with their required "certificates of verification," burden litigants with precise, cumbersome drafting standards under perjury penalties while requiring them to write out: *(1) a separate section in narrative form designated as "Nature of the Case" or "Background" covering the cause of action;* **(2)** *each of the "constitutional rights, privileges, or immunities" which have been violated, and "the facts form[ing] the basis of the allegations," for each of the causes of action; and* **(3)** *the "supporting facts" for each claim, "including names of persons involved, places, and dates," in addition to the descriptions of "exactly how each defendant is involved."*

The imposition of these burdens amounts to a requirement of pre-1939 fact and code pleadings, and *the operation of such rules, upon the phrasing of allegations and claims prior to the commencement of discovery, results in "pro se" complaints which are more prolix and lengthy,* and potentially in conflict

with other rules and standards. While Petitioner's civil rights complaint did not use the actual court paper "1983 Forms" purportedly required, a good faith effort was made to meet the content requirement.

Appendix H, p.26-28 summarizes the several counts of the complaint. Petitioner admits there is "fat" of 3 types in the Complaint. The aforesaid required "Background" section (6 pages) is a totally superfluous composition *forced* upon pro se litigants and of no consequence to the pleadings required to be answered. Petitioner on her own has added a superfluous 2 page "Summary of Counts" page index, and has also duplicatively placed the separate and distinct damage remedies at the end of each Count, and compiling them at the "Relief Sought"for pleader convenience.

Petitioner relied on the 1st Amendment right to petition for redress of grievances, equality before the law, **F.R.Civ.P. 3 and 7**, and the Seventh Circuit authority on prolixity and "fat," **Bennett v. Schmidt, et al., 153 F.3d 516 (7th. Cir. 1998)** [citing Jackson v. Marion County, et al., No. 93-2875 (Sept. 19, 1997)]:

> "[A]ll pleadings shall be so construed as to do substantial justice." Fed. R. Civ. P. 8(f). This objective is defeated if excess length becomes a fatal misstep. Prolixity is a bane of the legal profession but a poor ground for rejecting potentially meritorious claims....**Fat in a complaint can be ignored,** confusion or ambiguity dealt with by means other than dismissal....Bennett's **complaint could be improved, but it is intelligible and gives the defendants notice of the claim for relief.....**
> **But noting in the federal rules forbids the filing of prolix complaints.** [citing Jackson v. Marion County, et al., No. 93-2875 Sept. 19, 1995].

> **Litigants are entitled to discovery before being put to their proof, and treating the allegations in the complaint as a statement of the party's proof leads to windy complaints** and defeats the function of Rule 8. [omitting internal citations]....

There is a judicial duty, given the circumstances imposing a higher standard, to tolerate the longer, more detailed character of Petitioner's Complaint, rather than using it as an excuse to get rid of the Complaint. Petitioner HAS NO CIVIL RIGHTS COMPLAINT OTHER THAN THE ONE FILED MAY 7, 1998 and it is plainly and directly answerable in numbered counts and paragraphs. Petitioner has no other option than to rely on, *to date judicially obstructed* statutory process for resolution of the Complaint disputes.

Facts Relied on for the Striking and Disappearances Question: Petitioner sought jury adjudication of her civil rights disputes with defendants through judicial branch process. The May 7, 1998 Complaint is intelligible, easily admitted or denied in numbered paragraphs, and it was filed, the summonses issued and served and returns were made by a process server. The district court failed to quash the summonses after (on its own motion) striking the Complaint in an executive action on May 12, 1998 (**Appendix B**).

There is no legitimate basis for the striking the Complaint and incorporated Exhibits. They are composed to avoid Rule 12 motions from multiple defendants for a more definite statement, and to eliminate the likelihood of defendants' needs for extensive interrogatories, depositions, document production, or expensive, duplicative legal research.

The allegations of wrongdoing and associated damages are sufficiently detailed so as to not lead to unchanneled discovery or other unwarranted litigation expenses. ABSOLUTELY NOTING in the Complaint shows that the defendants are entitled to victory, nor suggests that Petitioner will encounter difficulty in proving defendants' intentional misconduct. *Moreover, the judges below examined the Complaint, and it is clearly not the case that they were pro-plaintiff* or they would have encouraged the defendants to settle the civil rights case, and it may be inferred from the record below, *that if the district judges estimated from their examination of it* that Plaintiff wouldn't have been able to *easily* survive any attempted Rule 12 or Rule 56 motions, *they would have done nothing,* because the docket would have been quickly thinned-out by defendants' predictable pursuit of their own interests. No heavy-handed executive action would have been needed, but examination of the record below gives evidence the obvious purpose. Once the seriousness of the allegations against certain of the defendants are understood, the extent of the damages to "business as usual" schemes, and the origin of Petitioner's series of unfortunate experiences, becomes transparent. Petitioner relies on the fact that appropriately (in order to to avoid appearances of a usurpative and prejudicial character) in light of **F. R.Civ.P. Rules 3 & 7,** *there is no statutory authority providing a judge with a pre-screening option for striking the whole cloth of disfavored complaints sua sponte.*

The striking order is founded upon mischaracterizations, misrepresentations, mangling of facts, and misapplication of statutes, and is supported with dicta from other circuit courts of appeal *in purposeful avoidance of conflict with he Seventh*

Circuit's precedents governing "prolixity" or "fat" in complaints. ***The striking order is an executive action, fully usurpative of the right to petition for redress of grievances through judicial branch jury adjudicatory processes.*** *Such action is not recognizable as a judicial act. It is evidence of promotion and protection of an executive branch agenda and executive branch allegiance, and it is the act of a political partisan, not a neutral magistrate holding office to facilitate jury adjudicatory process.*

The origin of the constitutional government problem brought forth by this QUESTION is material to consideration, and it needs to be courageously and effectively addressed. Corruption is obvious. It leaves its footprints. The "Black Flag - Secret Government" isn't a secret. People do know. It is a violation of the Constitution's separation of powers opportunistically and disingenuously making use of "national security" rhetoric. A similar pattern of MISSING DOCUMENTS and weird legal events (as that suffered by Petitioner) against mostly political targets, can be shown as a tool of an unconstitutional national security policy. The "programs" have code names. The instant cause of action Petitioner brings forward, demonstrates the *ridiculous level of paranoia prevalent in those fearful of open democratic constitutional government.* At is origin, Petitioner is suing to pay a license plate tax in order to drive a car without executive department and corporate cop harassment. Petitioner is not the enemy of constitutional government. Those who are, are identified by their "irregular" acts and omissions.

Executive branch interventions into the judicial sphere, for the purpose of affecting the outcome of *Petitioner's* litigation *are germane to the QUESTION.* Indiana Attorney Gen. Jeffrey Modisett needs to be made accountable relative to Petitioner's Indiana cause

of action. Although it is a slow process, Petitioner is in possession of admissible evidence of the covert executive branch invasion *of her civil litigation*, and her current Indiana "legal irregularities" are nothing more than a continuation of the prior executive covert "black op" interventions in her Michigan "Zeff"-related cases (through career Navy enlistee, State Bar of Michigan member, **attorney Leonard L. Bergersen,** then operating out of Chase Naval Air Station, Beeville, Texas and now operating as practicing private lawyer in Peace Dale, RI), and other cases. ONLY THE NAMES OF THE JUDICIAL BRANCH INTERLOPERS, INTERVENERS, AND FACILITATORS HAVE CHANGED. **These covert interventions with their SEALED RECORDS and sometimes no formal records, need to be terminated** with massive publicly exposure and remedial legal processes to the victims as Petitioner laid out in part (D) of the Relief Sought from the court of appeals (no. 98-3519). The whistle blower career Navy Captain who provided a partial list of such covert "fixers'" identities, did so **for the public benefit**. The complete listing of such unconstitutionally operating government employees has been available to executive department operatives with access to a government **Sentry computer terminal by access code 3A46915W** (and an i.d. such as # 844840417). This Court in the end needs to be remembered for demonstrating integrity with the courage needed to "have a look" and then discharge its judicial branch duty to "clean house" and effectively terminate conditions providing fertile soil for such usurpative executive enterprises. Beyond public exposure, restoration of judicial branch access for full jury adjudicatory process is the poison pill for such Secret Government "black ops."

Appendix H is Petitioner's timely response in

mitigation of Complaint striking, and it is one of several "DISAPPEARED" documents. Petitioner's position is that such striking order is nothing more than a misdirective nullity for reason of failure to quash the summonses, etc., **and thus Petitioner's timely entry for defaults against 13 defendants** ***are of consequence. and she is entitled to collection. and access to process therefor.***

In the Monroe county court (case no. 53-C 05 9711 IF 07836), Petitioner has suffered numerous document DISAPPEARANCES and RECORD ALTERATIONS (as documented in the federal civil rights Complaint and Exhibits 7 & 8). The Complaint Relief Section provides an effective remedy to which she is entitled. Petitioner has suffered 3 of her US district court civil rights case filings (no. IP 98-0621-C-H/G) to be "DISAPPEARED" from the official court record with **Appendix H** being one of them. The lower courts (see dockets, protest notices, and records) have made it absolutely clear, that are going to retain their "DISAPPEARED" status. In the US court of appeals (case no. 98-3519) Petitioner has suffered the "DISAPPEARANCE" of her Nov. 19, 1998 motion, affidavit, and proof of service. In all three aforesaid courts, and including the federal habeas corpus case (no. IP 98-1012-C-T/G) as documented below by notices of protest or requests for service of documents, she has been omitted and NOT been served a copy of the Indiana Attorney General's motion leading to the Oct. 20, 1998 court of appeals Order which also has NOT been served (see the Nov. 5, 1998 docket entry in no. 98-3519). At the US district court, Indianapolis, copies for service upon the Ind. Att. Gen. Jeffrey Modisett and the Monroe county sheriff, of Petitioner's "Habeas Corpus Petition and Motion for a Show Cause Order why the "trial in absentia" judge should not be held in

contempt of the federal reman," were refused to be received by the clerk, and no meaningful or timely action was taken on the merits, and the motion remains undecided. At the May 7, 1998 civil rights filing, the clerk attempted to refused receipt of Petitioner's "Civil Cover Sheet -JS 44" as provided with the Complaint and related documents. This Form, JS44, is approved by the Judicial Conference and is required to cause the initiation of the necessary civil docket sheet for the Complaint. Petitioner had to insisted it be received, and the case moved forward for a short time.

Petitioner still has no other option than to rely on those occupying positions in the judicial branch to actually do their duty, maintain records and provide jury access for resolution of her motions, petitions, and the Complaint. The duty to provide Petitioner meaningful judicial branch, First and Seventh Amendment access to adjudicatory process, continues to be ignored.

Facts Relied on for the Judicial Branch Access Fees Question: Petitioner relies on equality before the law and the First Amendment right to petition for redress of grievances equally in all 3 branches of government. Court access fee of $710 have been demanded of Petitioner as a condition of the federal court petitioning for redress of grievances in the matters at hand, all of which has been tendered under protest, and such protest is renewed again here. Moreover certain classes of litigants are allowed access without subjection to solicitation of access fees. On economic ground, one such class is poor people willing to waive their right to privacy and spend their time filling out requests *for permission* to proceed without prepayment [constit-

uting 2 violation by Petitioner's calculation]. On employment grounds, Semen's Suits are another class exempt from court access fee solicitation. On a political basis, government prosecutors who are by far the largest, most litigious class, are exempt access fee solicitation without a second thought. Judicial branch personnel have a duty to uphold the principles of the Constitution and to welcome, without solicitation of any access fee, all persons who seek use of judicial branch process for peaceful resolution of disputes, as a political right of the "blessings of government." Furthermore, this principle extends to all other political "blessings" of the government structure, including the right to registry of copyright and patents. Petitioner relies on constitutional rights, and a duty lies against those who have solicited such all "benefits of government" access fee, to make refunds to all citizens who've paid under protest, and conform future conduct to constitutional standards.

Facts Relied on for the Habeas Corpus-Blocked State Rights Question: Stemming from one incident on Nov. 24, 1997, criminal judgment for the minor non-moving traffic violation under **Ind. Code 9-18-2-29** was entered against Petitioner twice (on Dec. 18, 1997 and on March 26, 1998) and in the absence of any judicial arraignment or other basic due process. Such criminal conduct does not include an incarceration penalty. It has a maximum $500 fine and loss of the drivers license if the fine is not paid, and it was not paid because Petitioner had upon the suggestion in a federal remand, attempted a state court appeal of the first entry of criminal judgment which was blocked (as indicated in the Jurisdiction and Opinions Section), and because a federal civil right suit was filed after she

received notice of the entry of the second entry of criminal judgment, as it was her only remaining recourse. As part of the May 7, 1998 Complaint in US district court, due to the ongoing nature of the violations against her, an "arrest damage" provision was included. County officials previously caught in misconduct, paid "Bundy" $20,000. compensation on 6 hours false arrest and imprisonment upon her threat of making a fuss about it. Petitioner's damage provision was thought to be a sufficient deterrent against further problem-making against her and as as encouragement to see that she suffered no more police or prosecutor harassment. It was specified the sum of $1,000. per hour or part thereof for any arrest, official or otherwise. As referenced in the Jurisdiction Section, neither relevant law, nor the prospect having to compensate Petitioner for her loss of liberty, etc. was sufficient to prevent her incarceration for 40 days, from shortly after 8 pm on July 16th through the noon hour on August 24, 1998. The maximum penalty of loss of drivers license had already occurred at the time of the arrest. No personal jurisdiction existed over Petitioner from the time she discharged the summons issued at the time she was ticketed and when she was directed to remove herself from the court by the deputy prosecutor soliciting money and conducting arraignments on Dec. 4, 1998. **Appendix G.** p.14 is evidence of her timely court appearance. It took until Aug. 17, 1998 for Petitioner to get her documents titled "Plaintiff's Notice of Defendants' Retaliatory Punishment and Obstruction of Civil Rights Remedies, with Affidavit in Support, and Motion to Hold Proceedings in Abeyance" filed in her civil right case, it was denied, and its content of "Argersinger v Hamlin" and other major due process violations constituting cause for a hearing, were ignored. Petitioner relied on the avail-

ability of relief under the provision of **28 USC 2254(a)** requiring that a district court **shall** entertain an application for a writ of habeas corpus in behalf of a person in custody **pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution** or laws or treaties of the United States, and the facts of state court appeal blocking and jurisdiction-less retaliatory conduct of the defendants. Petitioner was entitled under **28 USC 2243** to prompt entertainment of her habeas petition and motion(which still remains unheard). Petitioner is still entitled to habeas relief and it presents a route under **28 USC 2251** whereby, at hearing, the court may find and act upon the county's blocking of Petitioner's Jan. 9, 1998 state court appeal, such that, at minimum, the criminal convictions are nullified and her drivers license restored. The district judge under the facts and law had a duty to either have freed Petitioner, or granted a stay while effecting a remedy of the state court appeal blocking, and it was and remains a particularly important duty, given the fact that the county court destroyed the evidence of the criminal judgment of Dec. 18, 1997 and the only remaining court copy exists in the US district court removal/ remand case.

Moreover, making the federal dereliction of duty even more egregious, **Appendix E** p.12 shows that Petitioner was NOT present at the second conviction, and no record exists of the issuance of any signed or sealed process commanding an appearance on March 26, 1998. **This is disturbing evidence that the powerful have cease to be responsible,** and that the jury who cooperated with the "trial in absentia" judge in producing the second criminal conviction, are more ignorant, indifferent, cowardly or contemptible than

those responsible for the ancient charter of liberties could have imagined. Nearly a thousand years ago in the **Magna Carta (1297 c.1 / C. 29, Sec. XXIX) it was determined that:**

> **No Freeman shall be taken or imprisoned, or be disseised of his Freehold, or Liberties, or free Customs, or be outlawed, or exiled, or any other wise destroyed; nor will We not pass upon him, or "condemn him," but by lawful judgment of his Peers, or by the Law of the Land. We will sell to no man, we will not deny or defer to any man either Justice or Right.**

Such jury speaks of the end of the republic and the onset of a dark age. They do not deserve Petitioner's respect. They represent the "boot-lickers" Founding Father Samuel Adams advised to "go home from us in peace" because "ye are not our countrymen." Such "trial judge" (an allegedly *former* Navy man) was not engaged in the administration of justice. *He was engaged in an executive action, in the absence of all personal jurisdiction over Petitioner,* and is liable therefor. Petitioner has no enforceable rights in state courts, and has no other option than to rely on federal court remedies.

Facts Relied on for the 7th Duck & Switch Question: Due to the peculiarities necessarily disclosed in the "OPINION" and "JURISDICTION" Sections, the material facts on the court of appeals document actions and dates have been laid out. Petitioner relied on the right to be heard when petitioning the judicial branch of government for relief of grievances, but the court of appeals Panel, undertook, as the jurisdictional

and opinion entries show, to find a means of avoiding having to make any substantive finding on the Petition for a Writ of Mandamus to the district court judge, and they wouldn't have done so, but for the merit of granting the relief Petitioner sought. Slippery dealing, by finding a creative way to duck their duty, as they did when they ordered their clerk to return the mandamus filing to the lower court for filing "a notice of appeal" upon an inappropriate date (and particularly bad faith looking in light of the fact that the lower court record at docket item 56 on Sept. 3, 1998 already gives notice of Petitioner's forthcoming petition for Seventh Circuit review), and if any date was to have been used, it should NOT have been one calculated to allow an appearance of an untimely notice on which to declare their lack of jurisdiction. When Petitioner gave timely notice of the forthcoming circuit court review for mandamus relief, and then timely filed and served such petition and supporting document, she relied on it being received and treated for what it was: a mandamus petition to compel duties owed to her. There was no authority or legitimate basis for "construing" it to be a 31 page briefed "notice of appeal." Moreover, here is no acknowledged legal basis for filing "an appeal" upon a complaint dismissed "without prejudice," and to the contrary, **28 USC 46(c) says cases and controversies shall be heard and determined.** What Petitioner brought forward to the court of appeals was not just some matter of legal error, correctable by providing some erudite dicta on the law. It was a matter of usurpation of meaningful access to judicial branch processes and refusal to give respect to the duties owed Petitioner who has no other option for resolution of the civil rights Complaint. Petitioner is still owed the detailed mandamus relief sought there.

REASONS FOR GRANTING THE PETITION

Absent action from this Honorable Court:

The civil rights Complaint defendants will have gotten away with: Obstruction of tax collection and tax receipt discrimination; Appeal-blocking for cover-up of criminal enterprise; Evidence "disappearance" and tampering, and obstruction of justice; Participation in or approbation of malicious Executive Branch usurpations of private rights and Judicial Branch process; Illegal, negligent, malicious, and willful conduct under color of law; Infliction of damages and losses upon Petitioner; and Conspiracy.

And the underlying defendants will be left with an unimpaired incentive not only for the various prosecutorial money diversion "programs," but for squelching the protests of the next citizen, blocking another appeal in an equally expedient manner as Petitioner was accorded, and defaming and jailing anybody who is persistently "troublesome" to "business as usual." The Complaint's alleged "Traffic Diversion Racket," (and other money-generating "prosecutorial deferral programs," diverting millions of dollars over the past decade and dependent upon prosecutorial usurpations of duties in the Judicial Branch sphere including criminal arraignments) will continue.

And Petitioner will be left with many government-sponsored problems: No access to a jury for resolution of ongoing disputes in her Complaint; No Judicial Branch means to compel acceptance of her tax payments; No car license plate or certificate of registration; No ability to lawfully sell or drive her car,

or rent a vehicle; An unjust record of a suspended/ revoked operators license; False and misleading medical records with related hazards; Ongoing transportation and related problems; An unjust, contrived criminal history and imprisonment record; and, she will continue to suffer from uncompensated past and ongoing prejudices, injuries and damages of the May 7 Complaint, the August 17, and September 3, 1998 filings. If Petitioner were to drive her car, defendants' will arrest her, tow her car away holding it until she ransoms it back, and she will be ticketed and summoned right back into the same courthouse where another attempted Executive Branch arraignment and prosecutorial solicitation of money in the traffic ticket "deferral program" will be foisted upon her, interposed concurrently *and cooperatively* with obstruction of her summoned duty to appear before a judge. And again she will be in jeopardy of being thrown out of the courthouse for attempting to appear before a judge, if not illegally arrested and jailed if she dares to again protest. And the federal court assess fees solicited totaling $710.00 will continue to appear as not only patently wrong and wasted, but as an encouragement of the legal fiction thriving below.

And the federal courthouse "doorkeepers" will continue to oppress and usurp access to the jury for resolution of disputes, while allowing covert intervention and usurpation by Executive Branch agents and interests. They will have gotten away with effective docket tampering and recalcitrance in addressing document "disappearances," and obstruction of justice. "Judgment Closed" as they have noted on their docket, means for Petitioner that the courthouse doors are closed, and she and any similarly embarrassing pro se litigants are not welcome. It also

means that "business as usual" will continue there too. And it means the US courts in Chicago and Indianapolis have abandoned their purpose and duty, and are no longer fit for the peoples' business. It is not discretionary to allow any of this to continue.

What makes these exceptional circumstances is that most people caught in the prosecutorial diversion money-generating rackets, simply pay up with the attitude that you can't fight city hall because it is all corrupt anyway. In Petitioner's case, in the absence of membership in the Social Security System coupled with the refusal of BMV officials to provide license plate services, she was cornered into "fighting city hall" and stumbled upon a multi-million dollar racket operating under color of law in which she could not simply pay to make it go away as other usually do. And these creative entrepreneurial executive branch "programs" are widespread. Additionally and extra-ordinarily this Petition brings forward the underlying reality of intrusion of executive branch agendas and allegiances over the at least 2 decades. It is no longer a well kept secret. Wrongdoers will continue to be identified. And Petitioner brings forth the evidence and has offered well-founded constitutional remedies, Moreover, the fact that the lower courts have had such an absolute hysterical reaction, speaks volumes to the need to put the "judicial house in order," as well as to the strength of the civil rights Complaint in the eyes of the enemies of constitutional law.

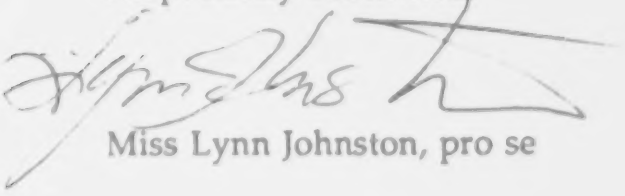
For this Court to fail to mandamus the Seventh Circuit, or otherwise act to see that Petitioner's civil rights and habeas causes of actions are satisfactorily resolved and her judicial branch jury adjudicatory rights secured, would amount to sanctioning abandon-

ments of public offices in favor of organized constitutional usurpations of coup d'etat significance and be of such a serious nature, so far below what formerly was the presumed course of conduct, *in both the county and federal courts,* as to require exercise of the all writs act and supervisory power of this Court.

CONCLUSION

The Petition for a Writ of Mandamus should be granted.

Respectfully submitted,



Miss Lynn Johnston, pro se

Date Submitted:

United States Court of Appeals
for the Seventh Circuit
Chicago, Illinois November 9, 1998

Before
Hon. JOHN L. COFFEY, *Circuit Judge*
Hon. FRANK H. EASTERBROOK, *Circuit Judge*
Hon ILANA DIAMOND ROVNER, *Circuit Judge*

LYNN JOHNSTON,
Plaintiff-Appellant

v.

BUREAU OF MOTOR VEHICLES COMMISSION, NANCY CARLSTEDT TRUSTEES OF INDIANA UNIVERSITY, et al.,
Defendant-Appellees.

No. 98-3682
Appeal form the United States District Court for the Southern District of Indiana, Indianapolis Division. No. 98 C 621

David F. Hamilton, Judge

ORDER

On August 4, 1998, the district court entered an order dismissing appellant's cause of action for failure to prosecute. On October 6, 1998, appellant filed a petition for a writ of mandamus with this court. On October 14, 1998, this Court construed the petition as a notice of appeal and transferred it to the district court for filing as of October 6, 1998. *See* Fed. R. App.P.4(a)(1).

In a civil case where the federal government is not a party, a notice of appeal must be filed within 30 days of the entry of the order or judgment appealed from. Fed. R.App.P. 4(a)(1); *Norgaard v. dePuy Orthopedics, Inc.*, 121 F.3d 1074, 1075 (7th Cir.1997); *Strasburg v. State Bar of Wisconsin*, 1 F.3d 468, 470 (7th Cir.1993), *cert. denied*, 510 U.S. 1047 (1994). However, the time for appeal may be tolled by the filing of a motion to alter or amend pursuant to Fed.R.Civ.P. 59(e), but only where such motion is filed within 10 days of the entry of the judgment. Fed. R.App.P. 4(a)(4); *Life Ins. Co. of North America v. Von Valtier*, 116 F.3d 279, 282 (7th Cir. 1997). In contrast, a motion to reconsider that is filed more than 10 days after the entry of the judgment is construed as a motion filed pursuant to Fed. R.Civ.P. 60(b), and such motion do not toll the time to appeal. Fed.R.App.P. 4(a)(4); *Life Ins. Co. of North America*, 116 F.3d at 282.

In this case, the judgment was entered on August 4, 1998. Although appellant did file what may be construed as a motion to reconsider, the motion was not filed until September 3, 1998. The motion was thus a motion to reconsider pursuant to Fed.R.Civ.P. 60(b) rather than pursuant to Fed.R.Civ.P.59(e) (*see Britton v. Swift Transp. Corp.*, Inc., 127 F.3d 616, 618 (7th Cir. 1997)), which therefore did not toll the time to appeal. Fed.R.App.P.4(a)(4); *Life Ins. Co. of North America*, 116 F.3d at 282. Therefore, the notice of appeal, with respect to the judgment of August 4, 1998, was filed nearly 30 days late, and must be dismissed for lack of jurisdiction. *See* Fed.R.App.P. 4(a)(1); *Life Ins. Co. of North America*, 116 F.3d at 282. Insofar as the notice of appeal is from the district court's September 11, 1998 denial of of the Rule 60(b) motion, the appeal

is timely filed.

IT IS ORDERED that the portion of appeal no. 98-3682 which is from the district court's judgment of August 4, 1998 is **DISMISSED** for lack of appellate jurisdiction.

IT IS FURTHER ORDERED that to the extent that the notice of appeal can be construed as being form the district court's s September 11, 1998 denial of appellant's Rule 60(b) motions for reconsideration, the district court's order is **SUMMARILY AFFIRMED.** *See Provident Sav. Bank v. Popovich,* 71 F.3d 6696, 698 (7th Cir.1995)(denial of relief under Rule 60(b) review under abuse of discretion standard, and reversed only if "no reasonable person could agree with the district court's determination")(citations omitted).

[no seal, signatures, or stamps]

United States District Court
Southern District of Indiana
Indianapolis Division

LYNN JOHNSTON
Plaintiff,
v.

BUREAU OF MOTOR VEHICLES, et al.,
Defendants.

FILED AUG 4 1998
U.S. DISTRICT COURT
INDIANAPOLIS, INDIANA

CAUSE NO. IP98-0621-C-H/G

ENTRY DISCUSSING SELECTED MATTERS

The court having reviewed the above action, now makes the following rulings:

1. The plaintiff has failed to submit an amended complaint as directed in Part II of the Entry issued on May 12, 1998. The plaintiff's failure to do so represents her abandonment of the claims in this action.

2. Judgment dismissing this action for failure to prosecute, without prejudice, shall no issue.

So ordered.

/s/ DAVID F. HAMILTON. Judge
Date: 8-4-98 United States District Court

JUDGMENT

The court, having this day made its Entry,

IT IS THEREFORE ADJUDGED that this cause of action is dismissed **without prejudice.**

/s/ DAVID F. HAMILTON. Judge
Date: 8-4-98 United States District Court

FILED
JUN 16 1998
U.S. CLERK'S OFFICE
INDIANAPOLIS, INDIANA
CAUSE NO. IP 98-0621-C-H/G

ENTRY DISCUSSING SELECTED MATTERS

The court, having reviewed the above action, now makes the following rulings:

1. The plaintiff's request that the Entry issued by Chief Judge Barker on May 12, 1998, be vacated is **denied.** The reason for this is that the rulings made in that Entry, including the striking of the plaintiff's complaint, were amply warranted.

2. The plaintiff's requests for the entry of default against various defendants are **denied.** The reason for this is that, at present, there is no viable initial pleading to which any defendant has failed to respond.

3. The plaintiff's failure to submit an amended complaint by the deadline given to her is unexplained, except perhaps through the effort to revive the original complaint. Since that will not occur, the plaintiff shall have a brief extension of time, **through July 15, 1998,** in which to file an amended complaint as directed in Part II of the court's Entry of May 12, 1998.

So ordered.

/s/ DAVID F. HAMILTON. Judge
United States District Court

Date: June 16, 1998

ENTRY DISCUSSING SELECTED MATTERS

We litigate in the federal courts today in the realm of "notice pleading." "The purpose of a complaint is to inform the opposing party of the grounds upon which the plaintiff's claim rests." *Archie v. Chicago Truck Drivers*, 585 F.2d 210, 217 (7th Cir. 1978). Nothing more. This point was reinforced by the Supreme Court in *Leatherman v. Tarrant Co. Narcotics Intelligence & Coordination Unit*, 113 S.Ct. 1160, 1161 (1993), when it explained:

> [t]he *Federal Rules of Civil Procedure* do not require a claimant to set out in detail the facts upon which he bases his claim. To the contrary, all the Rules require is "a short and plain statement of the claim" that will give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.

Fed.R.Civ.P. 8)(a)(2) requires that pleadings contain "a short and plain statement of the claim showing that the pleader is entitled to relief...." Additionally, Fed.R.Civ.P. 8)(a)(1) states that "[e]ach averment of a pleading shall be simple, concise, and direct." "Taken together, Rules 8(a) and 8(e)(1) underscore the emphasis placed on clarity and brevity by the federal pleading rules." 5 Charles Alan Wright et al., FEDERAL PRACTICE AND PROCEDURES § 1217, at 169 (2d ed. 1990).

It too often occurs in litigation that a complaint represents pleading overkill. The prolix and lengthy complaint in this case is an example of such a Leviathan. The consequences of such pleadings, if unchecked,

STATE OF INDIANA
COUNTY OF MONROE

SS:

IN THE MONROE CIRCUIT COURT
Case No: 53 CO5 9711 IF 07836

STATE OF INDIANA
vs
LYNN D. JOHNSTON

JURY TRIAL ORDER

State of Indiana appears by Jeffrey Kehr and the defendant fails to appear for jury trial this date. The State waives opening statement and witnesses were sworn and evidence heard. The State of Indiana rests and the Jury retires to deliberate.

The Jury returns with the following verdict: We, the Jury, find the State of Indiana has PROVEN its case against LYNN D. JOHNSTON on the offense of NO OR EXPIRED VEHICLE REGISTRATION, a class C Infraction.

The Jury is dismissed and the Court now sentences the defendant to pay a fine of $124.50 plus costs of $75.50, and the costs of assembling the jury of $300.00 because of the defendant's failure to appear. Further, the Court now issues a warrant for the arrest of the defendant for failure to appear with CASH BOND of $500.00

Further, the Court now directs the Clerk of the Court to notify the Bureau of Motor Vehicles of defendant's failure to appear.

SO ORDERED THIS 26th DAY OF MARCH, 1998.

/s/ Douglas R. Bridges, Judge

Distribution to: Monroe Circuit Court Division V
RJO File All Parties

United States District Court
Southern District of Indian.
Indianapolis Division

LYNN JOHNSTON
Plaintiff,
v.

BUREAU OF MOTOR
VEHICLES, et al.,
Defendants.

FILED SEP 11 1998
U.S. DISTRICT COURT
INDIANAPOLIS, INDIANA

CAUSE NO. IP98-0621-C-H/G

ENTRY

The plaintiff's "notice and protest" and accompanying documents of protest and demand filed on September 3, 1998, have been considered.

Lest there be any confusion, this action was dismissed. It has not been re-opened and there is no claim now pending. There is no relief to which the plaintiff is entitled based on her filings of September 3, 1998, and nay relief sought in such documents is **denied.**

So ordered.

/s/ DAVID F. HAMILTON. Judge
United States District Court

Date: 9-11-98

United States District Court
Southern District of Indiana
Indianapolis Division

LYNN DIANE JOHNSTON
Petitioner,

vs. No. IP 98-1012-C-T/G

RANDY WILLIAMSON (Sheriff),
Respondent.

ENTRY DISCUSSING PETITION FOR WRIT OF HABEAS CORPUS

This cause is before the court on the petition of Lynn Diane Johnston ("Johnston") for a writ of habeas corpus and on the supplement to such petition.

Johnston challenges the validity of the determination by the Monroe Circuit Court in a proceeding docketed as No. 53 C 05 9711 IF 079[sic]36 that she has committed the infraction of no or expired vehicle registration. Johnston is presently confined in the Monroe County Jail after being held in contempt by the trial court.

As a challenge to the disposition of the traffic violation in No. 53 C 05 9711 IF 079[sic]36, this action cannot proceed. The reason is that Johnston was sanctioned with a fine only and the Seventh Circuit has held, as have most other circuits, that a fine-only conviction is not considered a sufficient restraint on individual liberty to constitute "custody" within the meaning of the habeas corpus statute. *See Hanson v. Circuit Court*, 591 F.2d 404, 407 (7th Cir. 1979).

Although Johnston does not directly challenge her incarceration, such a challenge may have been intended in bringing the present action. If so, the challenge could not proceed in this forum at present

because Johnston has not challenged the finding of contempt beyond the trial court. This means that she has an available and meaningful remedy in the Indiana courts. That remedy is an appeal. *Hancz v. City of South Bend*, 691 N.E.2d 1322 (Ind.App.1998); *Holly v. State of Indiana*, 691 N.E.2d 1176 (Ind.App. 1997). The existence of that remedy renders the present action premature to the extent that Johnston's petition or supplement could be construed to challenge the finding of contempt which has resulted in her incarceration in the Monroe County Jail. "The purpose of exhaustion is not to create a procedural hurdle on the path to federal habeas court[sic], but to channel claims into an appropriate forum, where meritorious claims may be vindicated and unfounded litigation obviated before resort to federal court." *Keeney v. Tamayo-Reyes*, 112 S. Ct. 1715, 1720 (1992). The only manner in which that purpose can be served is by dismissing this action, without prejudice, and allowing Johnston to proceed with her claims in the Indiana courts.

Judgment consistent with this Entry shall no issue.

IT IS SO ORDERED.

Date: 9/11/98 /s/ JOHN D. TINDER. Judge
United States District Court

JUDGMENT

The court, having this day made its Entry,

IT IS THEREFORE ADJUDGED that this cause of action is **dismissed for lack of jurisdiction** to the extent that the petitioner challenges the validity of the disposition (fines and costs) in the proceeding docketed in the Monroe Circuit Court as No. 53 C 05

9711 IF 079[sic]36, and is **dismissed without prejudice** to the extent that the petitioner attempts through this action to challenge her incarceration for contempt related to the proceedings docketed in the Monroe Circuit Court as No. 53 C 05 9711 IF 079[sic]36.

Date: 9/11/98

/s/ JOHN D. TINDER. Judge
United States District Court

STATE OF INDIANA
COUNTY OF MONROE

SS:

IN THE MONROE CIRCUIT COURT
Case No: **53 CO5 9711 IF 07836**

STATE OF INDIANA
vs
LYNN D. JOHNSTON

JURY TRIAL ORDER

State of Indiana appears by Jeffrey Kehr and the defendant fails to appear for jury trial this date. The State waives opening statement and witnesses were sworn and evidence heard. The State of Indiana rests and the Jury retires to deliberate.

The Jury returns with the following verdict: We, the Jury, find the State of Indiana has PROVEN its case against LYNN D. JOHNSTON on the offense of NO OR EXPIRED VEHICLE REGISTRATION, a class C Infraction.

The Jury is dismissed and the Court now sentences the defendant to pay a fine of $124.50 plus costs of $75.50, and the costs of assembling the jury of $300.00 because of the defendant's failure to appear. Further, the Court now issues a warrant for the arrest of the defendant for failure to appear with CASH BOND of $500.00

Further, the Court now directs the Clerk of the Court to notify the Bureau of Motor Vehicles of defendant's failure to appear.

SO ORDERED THIS 26th DAY OF MARCH, 1998.

/s/ Douglas R. Bridges, Judge
Monroe Circuit Court Division V

Distribution to:
RJO File All Parties

Date: 12/18/1997

TO: LYNN JOHNSON [sic]
816 AUTO MALL ROAD # 243
BLOOMINGTON, IN 474701

You failed to appear 12/04/1997 for your traffic hearing, and a Default Judgment was entered against you. If you do not pay your fine by 01/08/1998, notification will be sent to the Indiana Bureau of Motor Vehicles to have your license suspended.

Case Number: 53C05 9711 IF 07836

Total Due: $82.50

MONROE COUNTY CLERK
P.O. 547
BLOOMINGTON, IN 47402
349-2602
812-349-2602

APPEARANCE FORM (CRIMINAL)
State of Indiana

(file stamp) FILED
DEC 04 199 Pat Haley
CLERK MONROE CIRCUIT COURT

Case Number: 53 CO 5 9711 IF 07836
(To be supplied by Clerk at the time of filing)

1. Name of Defendant(s): Johnston, Lynn D.
(See Administrative Rule 1(B)(4) for multiple charges or defendants)
2. Case Type of proceeding: Criminal -Traffic Infraction
3. Prosecuting Attorney information (as applicable):
Kim - Deputy Clerk
Name: Jim Trulock Attorney No. _____
Address: Deputy Prosecutor Phone: 349-6709
301 N. College FAX: _____
Bloomington, IN 47404
Computer Address: _____
Deputy assigned case (Optional): Myrna Love - Director of Infraction Diversion Program
4. Will the State accept service by FAX: Yes_ No x
5. Arrest report number (Originating Agency Case Number): N/A
6. Additional information required by state or local rule: Lynn Johnston pro se 816 Auto Mall Road Suite 243 Bloomington, IN 47401 812-335-2070

Authority: Pursuant to Criminal Rule 2.1(A), this form shall be filed at the time a criminal proceeding is commenced. In emergencies, the requested information shall be supplied when it becomes available. Parties shall advise the court of a change in information previously provided to the court. This format is approved by the Division of State Court Administrator.

United States District Court
Southern District of Indiana
Indianapolis Division

LYNN D. JOHNSTON
Petitioner,
v.

Cause No. IP 98-0004-C-M/S
Criminal Case No. 53 C 05 9711 IF
079[sic]36, MONRONE COUNTY COURT,
Respondent.

ENTRY DISCUSSING REMOVAL OF ACTION AND DIRECTING REMAND

Petitioner Lynn D. Johnston ("Johnston") was issued a traffic ticket in Monroe County, Indiana. Believing that this court presents an available and superior forum in which to resolve the issues raised through the ticket, Johnston has filed a notice of removal.

As explained in this Entry, Johnston's notice of removal is flawed and of no effect. The action must be remanded.

I Background

The ticket issued to Johnston on November 24, 1997 (the "ticket"), is formally entitled "complaint and summons," and alleges that Johnston operated a motor vehicle in Monroe County, Indiana, without a registration plate, and in doing so violated an Indiana law, Ind. Code §9-18-2-29. The ticket directed Johnston to appear in the Monroe Circuit Court on December 4, 1997, at 1:00p.m. The "case" to which the ticket is related in No. 53 C 05 9711 IF 079[sic]36.

According to Johnston's notice of removal, she appeared as directed on December 4, 1997, and attempted to ascertain the identity of the man who was

supposed to conduct the hearings. Johnston filed a written appearance and requested a trial by jury, but "stood mute" in relation to the entry of a plea. A few days later, she was notified by the Monroe County Court that she had failed to appear and that a default judgment had been entered. Now, asserting that she is unable to effectively assert her federally secured rights in connection with No. 53 C 05 9711 IF 079[sic]36 and that the resolution of that case was a "fraudulent default entry order," Johnston has removed the action from the Monroe Circuit (or the County) Court to this court.

II. Discussion

Federal courts are of limited jurisdiction, *Bender v. Williamsport Area School Dist.*, 475 U.S. 534, 541 (1986); *Abercrombie v. Office of Comptroller of Currency*, 833 F.2d 672, 674 (7th Cir. 1987). A district court possesses only the jurisdiction conferred to it by Congress. *See South Carolina v. Katzenbach*, 383 U.S. 301, 86 S. Ct. 803 (1966). Subject matter jurisdiction cannot be created, destroyed, or waived by the parties *See Brady Dev. Co. v. Resolution Trust Corp.*, 14 F.3d 998, 1006 (4th Cir. 1994). Thus, a district court must determine whether it possesses subject matter jurisdiction before it proceeds to the merits of the case. *See Packard v. Provident Nat'l Bank*, 994 F.2d 1039, 1049, (3rd Cir.), *cert denied sub nom., Upp v. Mellon Bank*, N.A., 510 U.S. 964 (1993), and "judges must consider jurisdiction as the first order of business." *Sherman v. Community Consol. Sch. Dist. 21 of Whelling Twp.*, 980 F.2d 437, 440 (7th Cir. 1992), *cert. denied*, 114 S. Ct. 2109 (1994).

Removal jurisdiction is completely statutory, and jurisdictional statutes cannot be construed any broader than their language will bear. *Cook v. Weber*, 698 F.2d 907, 909 (7th Cir. 1983). Jurisdiction in this

action is asserted to exist by virtue of 28 U.S.C. §1443(1). Section 1443(1) provides for the removal of a civil action commenced in state court "[a]against any person who is denied or cannot enforce in the courts of such State a right under any law providing for the equal civil rights of citizens of the United States...." 28 U.S.C. §1443(1).

The supreme Court established a two-part test for section 1443(1) removal petitions in *Johnson v. Mississippi*, 421 U.S. 213 (1975): "First, it must appear that the right allegedly denied the removal petitioner arises under a federal law 'providing for specific civil rights stated in terms of racial equality.'" Id., 421 U.S. at 219 (quoting *Georgia v. Rachel*, 384 U.S. 7880, 792 (1966)). A state court defendant's claim that "prosecution and conviction will violate rights under constitutional or statutory provisions of general applicability or under statutes not protecting against racial discrimination" is insufficient for removal. Johnson, 421 U.S. at 219. Second, it must appear "that the removal petitioner is 'denied or cannot enforce' the specified federal rights 'in the courts of [the State.'" Id. (quoting 28 U..S.C. § 1443(1) (1988)).[1]

In this case, there is no indication that the state court's handling of the traffic ticket issued to Johnston has been associated with laws relating to racial equality. Additionally, as in *Peole v. Lopez*, 919 F.2d 131 (10th Cir. 1990), Johnston seeks removal of a matter from a state court based solely on the assertion that the state court has given her inadequate procedural protections and has made an erroneous ruling. This will not satisfy the first portion of the *Johnson* test. 421 U.S. at 219. In addition, Johnston does not allege that the state courts will continue to be inhospitable to her federal constitutional claims, despite the fact that she has labored without success up

to this point. State courts normally are presumed capable of protecting federal constitutional and statutory rights. Therefore, removal is allowed only where a formal expression of state law or an equivalent basis clearly predicts that the federal rights will not be vindicated in the state courts. *Id.*, 421 U.S. at 219-20.

The following passage from *City of Greenwood*, 384 U.S. at 827-28, 86 S. Ct. at 1812, entirely captures the spirit in which Johnston's removal action must be assessed:

> It is not enough to support removal under § 1443(1) to allege or show that the defendant's federal equal civil rights have been illegally and corruptly denied by state administrative officials in advance of trial, that the charges against the defendant are false, or that the defendant is unable to obtain a fair trial in a particular state court. The motives of the officers bringing the charges may be corrupt, but that does not show that the state trial court will find the defendant guilty if he is innocent, or that in any other manner the defendant will be "denied or cannot enforce in the courts" of the State any right under a federal law providing for equal civil rights. The civil rights removal statue does not require and does not permit the judges of the federal courts to put their brethren of the state judiciary on trial. Under § 1443(1), the vindication of the defendant's federal rights is left to the state courts except in the rare situations where it can be clearly predicted by reason of the operation of a pervasive and explicit state or federal law that those rights will inevitably be denied by the very act of bringing the defendant to trial in the state court.

The assessment which is compelled from the foregoing is self-evident: Johnston's notice of removal does not satisfy either of the elements necessary to invoke the court's removal jurisdiction pursuant to 28 U.S.C. § 1443(1).

III. Conclusion

There is, in this case, not even the pretense of a basis for removal under § 1443(1). Under 28 U.S.C. §1446(4), "[t]he United States district court in which such notice is filed shall examine the notice promptly. If it clearly appears on the face of the notice and any exhibits annexed thereto that removal should not be permitted, the court shall make an order for summary remand." See *Continental Cablevision of St. Paul, Inc. v. United States Postal Service*, 945 F.2d 1434, 1441 n.3 (8th Cir. 1991).

An order of remand shall issue consistent with this Entry.

IT IS SO ORDERED.

/s/ LARRY J. McKINNEY. Judge
United States District Court

Date: 1/6/98

1. Section 1443(2) is unavailable to Johnson because it applies only to federal officers and person assisting federal officers in the performance of their official duties. *City of Greenwood, Mississippi v. Peacock*, 384 U.S. 808, 815 (1966).

ORDER OF REMAND

The court, having this day made its Entry, directing the remand of the criminal action known as No. 53 C 05 9711 IF 079[sic]36,

IT IS NOW ADJUDGED AND DECREED that the purported removal of No. No.[sic] 53 C 05 9711 IF 079[sic]36, in the Monroe Circuit Court is a **nullity** and this matter is now **remanded** to that court. The send-

ing of a copy of this Order and the accompanying Entry shall constitute the remand which is ordered. If petitioner Lynn D. Johnson[sic] or a state court clerk has actually caused the record from the Monroe Circuit Court to be transmitted to this court, it shall be returned to that court in an appropriate fashion.

/s/ LARRY J. McKINNEY. Judge
Date: 1/6/98 United States District Court

Copies to:

Lynn D. Johnston
816 Auto Mall Road #243
Bloomington, IN 47401

Monroe County Court
Courthouse
301 North College Avenue
Bloomington, IN 47404

United States District Court
Southern District of Indiana
Civil Action No. I P 98-0621 C - H/G

FILED
U.S. DISTRICT COURT
INDIANAPOLIS DIVISION
98 JUL 15 PM 1:09

LYNN JOHNSTON,
Plaintiff,

v

THE BUREAU OF MOTOR VEHICLES COMMISSION, ET AL
Defendants.

PLAINTIFF'S JULY 14th RESPONSE & NOTICE

N O W C O M E S Plaintiff Miss Johnston to communicate the following:

1. That on May 12, 1998, within a day after virtually all of the major Defendants and the Indiana Attorney General were served, the Chief Judge to whom this case was assigned entered what was represented to be her own Order crabbing about and striking the Complaint under the guise of the **Fed.R.Civ.P. 8(a)(2) and (e)(1),** representing that the Complaint violates both the letter and spirit of **Rule 8,** and allowing Plaintiff through June 4, 1998 during which time an amended complaint may be filed within the strictures of **Rule 8.**

2. That on June 4, 1998, Plaintiff timely filed and served her "Motion for Recusal; with Vacatur of Judge Barker's May 12, 1998 Order Striking the Complaint" with the required Brief in Support, Certificate of Good

Faith Application, and Affidavit of Facts. Subsequently the Chief Judge, on June 10, 1998 issued an Order removing herself from the case and directing the Clerk to reassign the case to another judge under **Local Rule 41.1**. The case was then assigned to Congressman Lee Hamilton's nephew, Judge David F. Hamilton who in the not too distant past, upon information and belief, worked closely with one Robert Johnstone, engaging in the legal business and entering into a common business partnership and economic relationship together with others at one the largest and most politically well-connected law firms in Indiana (Barnes & Thornburg) with offices in 5 cities including Washington, D.C. By notice dated June 15, 1998, Attorney Johnstone filed his formal Appearance with the Clerk on behalf of several of the Defendants.

3. That the next day, on June 16, 1998, Judge Hamilton, representing that he had reviewed the filings, entered his Order essentially rubber-stamping the prior striking Order of the Chief Judge, allowing Plaintiff an unsolicited extension of time through July 15, 1998 during which an amended complaint may be filed as previously directed by the Chief Judge.

4. That the **Rules of Civil Procedure at 7(a)** state that "[t]here shall be a complaint and an answer." That because Plaintiff's causes of action are in large measure of an ongoing nature, which is an exclusive result of Defendants' misconduct and recalcitrance, the Complaint is, of necessity, more lengthy than it would otherwise would need to be. Therefore Defendants should not justly benefit from the conditions, burdens, and wrongs they themselves have set in motion and sustain, and about which Plaintiff is entitled to formally complain in sufficient detail to demonstrate

the breath, depth, and gravity of the matters at issue to enable a reader of the allegations to understand them and either admit or deny them, or leave Plaintiff to her proofs. Notions about the Complaint being too long to necessitate Defendants' Answer or sufferance of the consequences, are irrelevant and purely partisan, and of a transparent political motivation regardless of whomever suggested, lobbied, initiated, produced and/or sustained the striking of the Complaint.

5. Plaintiff is pro se litigant suffering significant disadvantages in proceeding including a brain injury, and she is not a lawyer, and has never earned any undergraduate or advanced university degree in anything. Nonetheless, Plaintiff has undertaken enormous, persistent, good faith efforts to investigate and obtain the legal research and guidance required to produce a proper, intelligible Complaint and other necessary legal documents. This feat was and is, in part, accomplished through the reference and research assistance publicly available at Indiana University Law School, as well as other libraries' reference staffs. Said law school library collection of practice books and materials was the source used for the Complaint format and phraseology, and Plaintiff observes and asks that it be noted that this would normally be expected to be deemed a safe and reliable source of such legal document drafting guidance, and NOT something that would result in a virtually immediate and comprehensive striking of the resultant Complaint after it was filed, summonses issued, and within hours after service was effected on the major Defendants and the Indiana Attorney General. Thus it is appears strongly suggested that the genuine objectionable issue is the Complaint/Exhibits content

and illegalities and political problems related thereto.

6. Plaintiff suggests that Notice should be taken of **Local Rule 8.1 Pro Se Complaints** which purports to single out and burden pro se complainants as a class of persons as well as 4 classes of Complaints. The practical and prejudicial consequence of requiring the swearing under penalty of perjury as to the truth of very bit of the contents of a pro se complaint, is that those things subject to discovery process after the filing of the complaint and thus not known with "penalty of perjury certainty" at the filing of the complaint, of necessity must be stated in a cumbersome and repetitive manner (such as "upon information believed to have been reliably provided", etc.), with much more document composition work required under the apparent context and presumption that pro se litigants are dishonest and to be discouraged. Plaintiff objects to this higher threshold standard of complaint as unfair, burdensome, and prejudicial, and its result in the instant case is, at least in part, reasonably giving rise to a pretense for crabbing about the wording of the Complaint. Plaintiff further objects to the prejudicial and burdensome requirement that pro se complainants draft their complaints on the forms actually supplied by the court. The practical consequence again is unfair, burdensome, and prejudicial, and had Plaintiff not been willing to risk the $1,000.00 Local Rule violation fine, she would have not been able to use her Macintosh computer or otherwise reasonably produce an edited, spell-checked, readable, relatively professional looking, and appropriate Compliant. It is obvious to anyone contemplating the daunting task of hand printing or even typing out the necessary multiple copies of a complaint, that the special requirement of using the actual court

supplied forms is meant to discourage and dissuade pro se complainants from exercising their constitutional rights in a neutral forum. Additionally the court supplied forms suggest that the specific details of who did what (or didn't as the case may be), when, and how are required, which seems somewhat confusing in light of **F.R.Civ.P Rules 8 and 9** which differentiate between various categories in the pleading of the allegations. This situation also gives rise to a pretense for crabbing about a pro se complaint based on the provision any information beyond the what may be regarded as the sloppy or last minute bare minimum to preserve one's right to proceed with a **Rule 8** cause of action before statute of limitations tolls. Plaintiff submits that it is unconscionable to fault a pro se litigant for a attempting to meet a locally imposed higher and more wordy standard of legal composition, and more pointedly so in light of the body of precedents indicating that a less rigorous standard is to be applied to pro se complainant and their work product. Notice should also be taken of **Local Rule 1.3 - Limitations on Sanctions for Errors as to Form** which provides that violation of any local rule governing the form of pleadings and other papers filed with the Court subjects the violator to the imposition of a fine not to exceed $1,000.00 and providing that nothing in such rule shall prohibit the Court from ordering stricken from the record a paper which does not comply with these rules. Plaintiff protest the imposition of the threat and risk of such a financial penalty as a consequence of using her own paper, computer, and civil rights complaint format and phraseology provided and used by legal authorities on civil rights practice and pleadings.

7. That **Rule 8(e)(2)** provides that a party may also

state as many separate claims as the party has whether based on legal or equitable grounds, which is exactly what Plaintiff did in 16 separate counts. A cursory analysis of the Complaint will show that although it is a lengthy and complex cause of action with 19 defendants and 16 separate counts, none of the following counts which may arguably come under the purview of Rule 8, is unduly long, and all of the following counts and allegations contained therein can be admitted, denied, or otherwise pleaded out in accordance with the complaint response provisions of the same Rule 8:

Count One consists of 10 pages (and involves the Acts or Omissions of the Bureau of Motor Vehicles Commission and its agents -7 Defendants);

Count Two consists of 12 pages (and involves a cause of action as a consequence of Providing a Context of Prejudicial & Coercive Circumstances Under Which Bodily, Property & Other Injuries Occur through Defendant Bureau of Motor Vehicles Commission and its Agents);

Count Three consists of 2 pages (and involves a cause of action resulting from a Social Security System Conspiracy for Effecting 100% Membership through Defendant Bureau of Motor Vehicles Commission, its Agents, and Defendant Hospital Entity);

Count Four consists of 4 pages (and involves a Legal Conspiracy for Infliction of Predictable Economic & Legal Pains and Punishments by Malicious Empowerment of Cops, Clerks &

Prosecutors Nationwide through Defendant Bureau of Motor Vehicles Commission and its Agents);

Count Five consists of 3 pages (and involves a cause of action as a consequence of Tax Collection Obstruction by Defendant Bureau of Motor Vehicles Commission & its Agents);

Count Six consists of 2 pages (and involves a cause of action arising upon the Malicious & Willful Conduct of Defendant Licensing Authority Entities);

Count Seven consists of 4 pages (involving the Acts & Omissions of Defendant Hospital Entity);

Count Eight consists of 3 pages (involving a cause of action for Constructive Maliciousness and Willfulness of Defendant Hospital Entity);

Count Nine consists of 6 pages (involving the Acts & Omissions of Defendant Corporate University Policing Entities);

Count Ten consists of 4 pages (involving the Constructive Maliciousness and Willfulness of Defendant Corporate University Policing Entities);

Count Eleven consists of 4 pages (involving the Unlawful Empowerment & Warrantless Seizure by Defendant Tow Truck Operator);

Count Fourteen consists of 2 pages (involving a

Conspiracy and Obstruction of Justice);

Count Fifteen consists of 2 pages (involving a cause of action for Courthouse Willfulness and Maliciousness); and

Count Sixteen consists of 1 page (involving the Liability of Bonding Agents & Insurers).

Because the other 2 counts, which are somewhat long and detailed (**Count Twelve consisting of 15 pages** involving the Acts & Omissions of Defendants Court Clerk & Deputy Prosecutor, and **Count Thirteen consisting of 17 pages** involving the Running of a Traffic Diversion Racket), involve pleading "Special Matters" (such as fraud), they do not come under the strictures of **Rule 8**, but rather **Rule 9** which requires stating the allegations with particularity. It should be further noted that the allegations contained in these 2 counts can also be admitted, denied, or otherwise pleaded out in accordance with the complaint response provisions of **Rule 8.**

8. That because **Rule 7** designates that there "shall be" a complaint and an answer. A review of the **Index to the Fed. Rules of Civ. P.** under "Striking" refers the reader to see "Pleadings" and thereunder upon checking the term "Complaint" striking is not provided for, and further checking under "Pleadings" for the term "Striking," broad brush complaint striking is not provided for, but **Rules 12(e), 12(f), 14(a), 37(b), and 37(d)** are referenced. Upon checking the content of such rules, only **Rule 12(f)** has any relevance to the situation in the instant case. It reads:

Motion to Strike. Upon motion made by a party

> before responding to a pleading or if no responsive pleading is permitted by these rules, upon motion made by a party within 20 days after the service of the pleading upon the party or upon the court's own initiative at any time, the court may order stricken from any pleading any insufficient defense or any redundant, immaterial, impertinent, or scandalous matter.

Plaintiff submits that the Chief Judge Sarah Barker and Judge David Hamilton, have, at minimum, over reached the actual provisions and legitimate purposes of the Rules governing striking by their wholesale striking of the Complaint. Striking redundant, immaterial, impertinent, and/or scandalous material from a complaint, is indeed of a different purpose and character of conduct than striking every word and allegation comprising a compliant, and the difference is that state of governance wherein the courts are a neutral forum for the peaceful and regular hearing and resolution of grievances as opposed to that state of political affairs wherein the courts are means for silencing unpopular complainants.

9. That it would appear that the content matter apparently found to be the genuine basis for the striking of the Complaint, most likely consists of the Counts 12, 13 and 14, and perhaps the damage section references to prior covert military interference in Plaintiff's civil litigation by naval personnel and/or similar references to the problem of covert executive agents operating as Black Flag Judges and lawyers. Nonetheless, these are genuine damage issues and ongoing problems for which Plaintiff can provide documentary and other proof. Moreover, Plaintiff alleges Judge Douglas R. Bridges' naval career, and

asks that special notice be taken of his unprecedented conduct against Plaintiff in the underlying Monroe County Courthouse. Further, should it become necessary, Plaintiff will provide a comprehensive brief on the Naval loophole and promotion of its own form of adjudicatory activity and exemption from the constraints of the Posse Comitatus Act. Plaintiff further discloses the discovery of "Clipper" and "Scaler" things on her private computer, and states that to the best of her own knowledge and beliefs her apparent Navy problems stem from raising a question in a public forum related to the testing cobalt bombs under the Great Lakes while she was a candidate for US Senate in 1984.

10. Plaintiff hereby gives notice and protests of invasions of her privacy, property and security and intends to prosecute to the fullest extent possible all criminal violations and foul play, and states for the record, that all of the outside lights on the large apartment building in which Plaintiff resides, and which are normally and automatically on from dusk to dawn apparently coincidentally burned out within hours concurrently with what isanother in the ongoing suspected malicious tampering of Plaintiff's motorbike lighting, and steering mechanisms, and necessitating Plaintiff's undertaking arrangements to have professional evaluation or gathering of evidence of possible foul play. Additionally, because of the ongoing transportation deprivations caused and maintained by Defendants, Plaintiff depends on regular use of the aforesaid motorbike, and strenuously protests this situation and the bearing all the additional expenses related thereto including alternative transportation costs and consequential inconveniences.

11. That Defendants served on about May 11 or 12, 1998, have had in excess of 60 days within which to contemplate appropriate responses to the Complaint.

T H E R E F O R E in light of the foregoing, one of the following will occur (providing Plaintiff does not meet with untimely incapacitation): (A) Plaintiff will timely seek review and corrective action at the Seventh Circuit Court of Appeals; (B) Defendants will file and serve Answers to the allegations in the Complaint; or (C) The parties will execute and record evidence of settlement;

July 15, 1998

Respectfully submitted,

/s/ Lynn Johnston

Lynn Johnston, Plaintiff